

person where the High Court exercises its original criminal jurisdiction.

The short answer to the question I have to decide is, as stated by the learned Solicitor-General, that there is no provision in the Criminal Procedure Code which requires that before an accused person is brought before the High Court under its original criminal jurisdiction there must first be a preliminary inquiry and a committal for trial following upon such inquiry. It seems to me that it is not a question of what the practice has been but whether under the provisions of the Criminal Procedure Code the High Court can only take cognizance of an offence under the Penal Code after the matter has been first inquired into by a subordinate court with a view to committal for trial by the High Court. So considered it seems to me that the High Court is not precluded from so doing. Furthermore section 176 of the Criminal Procedure Code, which is the relevant section under which this application ought to be considered, specifically provides that the High Court may make an order that any particular case shall be transferred to and tried before the High Court without any qualifying words at all and in my view the discretion conferred by this section is not limited to a discretion to remit the case to a subordinate court for a preliminary inquiry with the view to committal of the accused for trial by the High Court. In my view section 176 enables the High Court in a proper case to make an order transferring any particular criminal case from a subordinate court direct to the High Court for trial by the High Court and for the High Court thereupon to dispose of that particular case by way of summary trial. In the result I now make an order that the 1st Criminal District Court Case No. 108 of 1963 be transferred to the High Court for summary trial on a date or dates to be fixed by the Registrar of this Court.

*Case transferred to High Court
for summary trial.*

LIM KIEN MOK v. B. H. KEVAN

[A.Cr.J. (Ambrose J.) June 26, 1963]

[Singapore — Magistrate's Appeal No. 177 of 1962]

Landlord and Tenant—Notice to quit—Service on Tenant—Crown Lands Encroachments Ordinance (Cap. 245) ss. 2 and 20—Meaning of Crown Land—When statutory body Crown Servant or Agent—Whether Services' Lands Board Crown Agent—Whether land leased to Services' Lands Board Crown Land.

Crown Lands—Land leased by Crown to Services' Lands Board—Whether Crown land—Crown Lands Encroachments Ordinance (Cap. 245), s.2.

Constitutional Law—Crown—Whether one and in-

A divisible as far as Singapore is concerned—Singapore (Constitution) Order in Council, 1958.

Interpretation—Reference to title to interpret Ordinance.

B This appeal raised the question whether a piece of land which was leased by the Crown to the Services' Lands Board is Crown land within the meaning of section 2 of the Crown Lands Encroachments Ordinance. The facts were these. On January 1, 1958 a War Department Land Agent issued a licence to Lim Kien Mok for the temporary occupation of a portion of a piece of land, which was then Crown land occupied by the War Department. On May 28, 1959 the Crown leased the piece of land to the Services' Lands Board for nine hundred and ninety-nine years from January 1, 1959. *C* This Board is a corporation incorporated in Singapore under the Services' Lands Board Ordinance, 1959 which came into operation on February 13, 1959. A notice to quit dated March 30, 1962 and addressed to Lim Kien Mok was posted on the same day on the main door of a house situated on the area occupied by Lim. The notice required Lim to quit the area on April 30, 1962, or other the day on which the current month of his licence would expire next after the end of one calendar month from the date of his being served with the notice. *D* On May 31, 1962 a complaint was made by Brian Herbert Kevan, a War Department Land Agent and Deputy Collector of Land Revenue, to a Magistrate against Lim under section 2 of the Crown Lands Encroachments Ordinance, alleging that he was given a month's notice to quit on March 30, 1962, but had not vacated the portion of the Crown land occupied by him. Lim was summoned to answer the complaint. *E* The Magistrate's Court found that the notice to quit had been duly served, and that Lim was in unlawful occupation of Crown land, and made an order for a warrant for dispossession to be issued, but stayed execution of the warrant pending the disposal of the present appeal.

F **Held:** (1) the rule as regards service on a tenant is that a notice left at the tenant's house, but not served on anyone personally, is effectual if it can be proved that it actually came to his hands in time to give him notice of the proper length; and as the complainant failed to prove this, the Magistrate's finding and order must be set aside;

G (2) upon the promulgation of the present Singapore Constitution on June 3, 1959, Crown lands in Singapore became vested in the Crown in right of Singapore and the Crown ceased to be one and indivisible as far as Crown lands in Singapore are concerned:

(3) the Services' Lands Board is an agent of the Crown in right of the United Kingdom;

(4) the fact that the Services' Lands Board holds the leased land for the purposes of the Crown in right of the United Kingdom does not make the land Crown land within the Crown Lands Encroachments Ordinance;

H (5) "Crown land" in the Crown Lands Encroachments Ordinance means unalienated Crown land; and once a piece of land is alienated by the Crown it ceases to be Crown land for the purposes of the Ordinance;

I (6) when the land was leased by the Crown to the Services' Lands Board it ceased to be Crown land; and thereafter it was not open to the War Department Land Agent to make use of section 2 of the Crown Lands Encroachments Ordinance to remove a person alleged to be in unlawful occupation of the leased land. *Deputy Public Prosecutor v. Lim Kien Mok*⁽²⁾ not followed.

Cases referred to:—

(1) *Poh Yee Choi v. Shun Fah & Co.* [1948] M.L.J. 102.

(2) *Deputy Public Prosecutor v. Lim Kian Mok*
[1962] M.L.J. 154.

MAGISTRATE'S APPEAL.

Cheng Tim Pin for the appellant.

J. Grimberg for the respondent.

Cur. Adv. Vult.

Ambrose J.: This appeal raised the question whether a piece of land which was leased by the Crown to the Services' Lands Board is Crown land within the meaning of section 2 of the Crown Lands Encroachments Ordinance. The answer to this question involved consideration of the interesting point whether under the Singapore Constitution which was promulgated on the 3rd June, 1959, the Crown is one and indivisible as far as Singapore is concerned.

The facts were these. On the 1st January, 1958, a War Department Land Agent issued a licence to Lim Kien Mok for the temporary occupation of a portion of a piece of land, which was then Crown land occupied by the War Department. On the 28th May, 1959, the Crown leased the piece of land to the Services' Lands Board for nine hundred and ninety-nine years from the 1st January, 1959. This Board is a corporation incorporated in Singapore under the Services' Lands Board Ordinance, 1959, which came into operation on the 13th February, 1959. A notice to quit dated the 30th March, 1962, and addressed to Lim Kien Mok was posted on the same day on the main door of a house situated on the area occupied by Lim. The notice required Lim to quit the area on the 30th day of April, 1962, or other the day on which the current month of his licence would expire next after the end of one calendar month from the date of his being served with the notice. On the 31st May, 1962, a complaint was made by Brian Herbert Kevan, a War Department Land Agent and Deputy Collector of Land Revenue, to a Magistrate against Lim under section 2 of the Crown Lands Encroachments Ordinance, alleging that he was given a month's notice to quit on the 30th March, 1962, but had not vacated the portion of the Crown land occupied by him. Lim was summoned to answer the complaint. The Magistrate's Court found that the notice to quit had been duly served, and that Lim was in unlawful occupation of Crown land, and made an order for a warrant for dispossession to be issued, but stayed execution of the warrant pending the disposal of the present appeal.

The first question I considered was whether the learned Magistrate erred in law in holding that the notice to quit had been duly served on Lim. The rule as regards service on a tenant is that a notice left at a tenant's house, but not served on any one personally, is effectual if it can

be proved that it actually came to his hands in time to give him notice of the proper length: 23 *Halsbury's Laws of England*, 3rd edition, p.526. The complaint was made by the complainant to the Magistrate on the 31st May, 1962. And the complainant alleged in the complaint that the notice to quit was given on the 30th March, 1962. I inferred from those two facts that the complaint was that Lim failed to quit the area occupied by him on the 30th April, 1962. The complainant had, therefore, to prove that the notice came to Lim's hands on the 30th March, 1962, to give him one month's notice as required under the conditions of the licence. As the complainant failed to prove this, I reversed the Magistrate's finding that the notice to quit had been duly served and that Lim was in unlawful occupation of Crown land, and set aside the order that a warrant for dispossession be issued.

Thus it became unnecessary for me to consider the question set out at the outset of this judgment. But I was urged by both counsel to decide it as it was a question of considerable importance to the parties and involved an important constitutional question. It was contended by counsel for Lim, the appellant, that the piece of land leased to the Services' Lands Board was not Crown land. This contention was based on two propositions: first, the word "Crown" in the Crown Lands Encroachments Ordinance means the Crown in right of Singapore; secondly, the Board did not hold the land as agent of the Crown in right of Singapore. It was contended by counsel for the respondent that the land held by the Board is Crown land. This contention was based on two propositions: first, the Crown is one and indivisible; secondly, the land was held by the Board as agent of the Crown.

The authority cited by counsel for the appellant for his first proposition was *Poh Yee Choi v. Shun Fah & Co.*⁽¹⁾. All that this case decided was that public moneys in the hands of the Paymaster, Malaya Command, cannot be garnished; that section 11 of the Courts Ordinance gives the Court no jurisdiction to order the attachment of such moneys; and that Order XLI and Order XLIII cannot be construed as conferring any such power. Counsel for the appellant relied on the following passage from the judgment of McElwaine C.J.

"No fiat could be given under s.21 of the Crown Suits Ordinance because such proceedings would not be against the Crown in right of the Colony because the debt is not a debt due by the Colony and the judgment would not be satisfied out of the Colony revenue; An action against the Crown in right of the United Kingdom would not lie in the Courts of the Colony unless the Crown in that right submitted to the jurisdiction.

For purposes of litigation the Crown is often not one and indivisible as may be seen in actions between the Crown in right of a Canadian Province and the Crown

in right of the Dominion. So a tax due to the Crown in one part of His Majesty's Dominions cannot be sued for in another part This distinction between the different capacities of the Crown is touched on in the Workmen's Compensation Ordinance, s.2, where it is enacted that a person is not a workman within the meaning of the Ordinance who is 'in the civil employment of His Majesty otherwise than in His Government of the Colony'."

Counsel submitted that this passage was authority for the wide proposition that the word "Crown" in any Singapore Ordinance means the Crown in right of Singapore; and that it was therefore authority for the proposition that the word "Crown" in the Crown Lands Encroachments Ordinance means the Crown in right of Singapore. In my opinion, the passage cited is no authority for either proposition.

The authority cited by counsel for the respondent for his proposition that the Crown is one and indivisible was the following passage from the judgment of Rose C.J. in *Deputy Public Prosecutor v. Lim Kian Mok*⁽²⁾:

"Mr. Cheng Tim Pin in his able argument made the point that the Crown has many facets and that the Sovereign must at times be regarded in different capacities vis-a-vis, for example, the United Kingdom and Singapore. Be that as it may, it does not seem to me to affect the basic conception of the Crown as being one and indivisible, even if it acts through separate fiscal agencies."

It appears to me that a different view is taken as to the political capacities of the Crown by Professor L. A. Sheridan in *The British Commonwealth, The Development Of Its Laws And Constitution*, Vol. 9. In that volume which is entitled *Malaya And Singapore, The Borneo Territories*, and which was published in 1961, Professor Sheridan says (at pages 108 and 109):

"The Yang di-Pertuan Negara is the Queen's representative in her capacity as ruler of Singapore. . . . The United Kingdom Commissioner is the Queen's representative in her capacity as ruler of the United Kingdom."

The first sentence is based on section 4(1) of the Singapore Constitution of 1959, which reads:

"There shall be in and for Singapore a Representative of Her Majesty to be known as the Yang di-Pertuan Negara."

The second sentence is based on section 15 of the Constitution which reads

"There shall be in and for Singapore a Representative of the Government of the United Kingdom, to be known as the United Kingdom Commissioner."

Evidently Professor Sheridan equates the Queen in her capacity as ruler of the United Kingdom with the Government of the United Kingdom. Although section 4(1) of the Constitution does not expressly state that the Yang di-Pertuan Negara is the Queen's representative in her capacity as ruler of Singapore, it can hardly be

A supposed that he is the Queen's representative not only in her capacity as ruler of Singapore but also in her capacity as ruler of the United Kingdom, while the United Kingdom Commissioner is representative of the Queen in the latter capacity.

B In my judgment, it is necessary to recognize the existence of the two different political capacities of the Crown in Singapore as from the 3rd June, 1959. For while the Constitution of 1959 conferred internal self-government upon the State of Singapore, defence and external affairs were declared by section 72 to be the responsibility of the Government of the United Kingdom. C And I hold that the Crown ceased to be one and indivisible as far as Crown lands in Singapore are concerned upon the promulgation of the present Singapore Constitution on the 3rd June, 1959. For I take the view that the ownership of public lands is an incident of internal self-government, and that Crown lands in Singapore became vested in the Crown in right of Singapore upon the promulgation of the present Constitution. It is significant that section 8 of the Constitution confers on the Yang di-Pertuan Negara, who represents the Crown in right of Singapore, the power to make grants and dispositions of lands or other immovable property in Singapore, which may lawfully be granted or disposed of by Her Majesty, in Her Majesty's name and on Her Majesty's behalf; and that the United Kingdom Commissioner has no such power. D It is also significant that on the 28th May, 1959, shortly before the promulgation of the present Constitution, the Crown, which was then one and indivisible so far as Crown lands were concerned, leased the piece of land under consideration in this appeal to the Services' Lands Board for the purposes of the Armed Services of the Crown in right of the United Kingdom. E In my opinion, such a step would not have been necessary if the Crown was to remain one and indivisible after the promulgation of the present Constitution so far as Crown lands in Singapore are concerned. F G

H I now turn to the question whether the Board is an agent of the Crown either in right of Singapore or in right of the United Kingdom. The long title of a statute may be looked at for the purpose of ascertaining its scope: 36 *Halsbury's Laws of England*, 3rd edition, p.369. The long title of the Services' Lands Board Ordinance is this: An Ordinance to establish and incorporate a Services' Lands Board empowered to acquire, hold and dispose of land and interest in land and to make provision for matters related thereto. It seems clear to me from the long title that the primary function of the Board is to acquire and hold land for the purposes of

the Armed Services of the Crown. This function is not commercial and is connected with the defence of Singapore, which is a responsibility of the Government of the United Kingdom, that is, the Crown in right of the United Kingdom. The inference that a corporation acts on behalf of the Crown is more readily drawn when its functions are not commercial but are connected with matters such as the defence of the realm, which are essentially the province of government: 9 *Halsbury's Laws of England*, 3rd edition, p.10. The members of the Board are appointed and may be removed at any time by one or other of Her Majesty's Principal Secretaries of States: section 3 of the Ordinance. The evidence is that all the members are attached to the Armed Services of the Crown. The question whether a corporation is a servant or agent of the Crown depends on the degree of control which the Crown, through its Ministers, can exercise over it in the performance of its duties: 9 *Halsbury's Laws of England*, 3rd edition, p.10. In my opinion, the Services' Lands Board is completely under the control of the Crown in right of the United Kingdom. For the above reasons, I have no difficulty in coming to the conclusion that the Board is an agent of the Crown in right of the United Kingdom.

But, in my judgment, the fact that the Board holds the leased land for the purposes of the Crown in right of the United Kingdom does not make the land Crown land within the meaning of the Crown Lands Encroachments Ordinance. I take the view that "Crown land" in that Ordinance means unalienated Crown land. Once a piece of land is alienated by the Crown it ceases to be Crown land for the purposes of the Ordinance, and the new owner has the ordinary remedies against any person who occupies the land unlawfully. In my opinion, when the land was leased by the Crown to the Board the land ceased to be Crown land; and thereafter it was not open to the War Department Land Agent to make use of section 2 of the Ordinance to remove a person alleged to be in unlawful occupation of a portion of the leased land.

There was a dispute as to whether the Crown or the complainant should be the respondent in this appeal. The proceedings in the Magistrate's Court were between the complainant and the occupant. In my opinion, as the appeal has been brought by the occupant the proper respondent is the complainant.

As the complainant should not, in my opinion, have proceeded under section 2 of the Crown Lands Encroachments Ordinance, I order him to pay the appellant's costs of this appeal to be taxed by the Registrar.

Appeal allowed.

A Solicitors:—*Rodyk & Davidson; Drew & Napier.*

HARJIT SINGH v. REGINA

[A.Cr.J. (Winslow J.) June 26, 1963]

B [Singapore — Magistrate's Appeal No. 39 of 1963]

Criminal Evidence—Voluntarily causing grievous hurt with heavy stick—Depressed fracture of skull—Evidence of fracture—X-ray photograph not produced—Oral evidence by medical officer—Whether secondary evidence admissible.

C This was an appeal from a conviction upon a charge of causing grievous hurt by means of a heavy stick which caused a depressed fracture of the skull. At the trial no X-ray photograph of the fracture was given in evidence but oral evidence was given by a medical officer. No objection was taken at the trial to the non-production of the X-ray photograph.

D Held: (1) the medical officer who gave oral evidence gave evidence of the contents of a document which was not produced in court in circumstances where no satisfactory evidence had been laid for the admission of secondary evidence of the original. In these circumstances the fracture could not be proved without admission of hearsay evidence;

(2) the evidence of the medical officer apart from that on the fracture did not substantiate grievous hurt;

E (3) failure to produce the X-ray photograph could not be excused on the ground that no objection to its non-production was made at the trial.

MAGISTRATE'S CRIMINAL APPEAL.

S. H. D. Elias for the appellant.

F Donald Yeo (Deputy Public Prosecutor) for the respondent.

G Winslow J.: In this appeal against his conviction and sentence of six months' imprisonment upon a charge of voluntarily causing grievous hurt to the complainant by means of a heavy stick which caused a depressed fracture of the skull, counsel for the appellant submits, as his first ground of appeal, that there was no evidence of such a fracture since the only evidence thereof was contained in an X-ray photograph which was not produced in Court.

H In my opinion, the point is well taken because the medical officer who was called to give evidence gave oral evidence of the contents of a document which was not produced in Court in circumstances where no satisfactory foundation had been laid for the admission of secondary evidence of the original. It therefore follows that the medical officer was not, without the aid of the hearsay evidence in question, in a position to say that what she herself found on examination of the patient was a fracture of the skull. By the application of some common sense to the case as a whole, it would no doubt be possible to say that there were materials before him on